INDEX

CITATIONS

Cases:

	Page
Ashwander v. *Tennessee Valley Authority*, 297 U.S. 288	2
Bell v. *Burson*, 402 U.S. 535	11
Carrington v. *Rash*, 380 U.S. 89	10
Cohens v. *Virginia*, 6 Wheat. 264	2
Dandridge v. *Williams*, 397 U.S. 471	11
Dunn v. *Blumstein*, 405 U.S. 330	10
Goldberg v. *Kelly*, 397 U.S. 254	12
Heiner v. *Donnan*, 285 U.S. 312	10
Hoeper v. *Tax Commission*, 284 U.S. 206	10
Kent v. *Dulles*, 357 U.S. 116	6
Knowles v. *Butz*, No. C–72–1578 AJZ (N.D. Calif.), decided February 23, 1973	9
Light v. *United States*, 220 U.S. 523	5
Lincoln Federal Labor Union v. *Northwestern Iron & Metal Co.*, 335 U.S. 525	10
Ortwein v. *Schwab*, No. 72–5431, decided March 5, 1973	6
Reed v. *Reed*, 404 U.S. 71	10
San Antonio Independent School District v. *Rodriguez*, No. 71–1332, decided March 21, 1973	9–10
Schlesinger v. *Wisconsin*, 270 U.S. 230	10
Siler v. *Louisville & Nashville R. Co.*, 213 U.S. 175	5
Stanley v. *Illinois*, 405 U.S. 645	10–11

500-022—73——1

Statutes and rule:
Food Stamp Act of 1964, 78 Stat. 703, as amended, 84 Stat. 2048, 7 U.S.C. 2011–2025:
Page
Sec. 2, 7 U.S.C. 2011 9
Sec. 3(e), 7 U.S.C. 2012(e) 9
Sec. 5(b), 7 U.S.C. 2014(b) 1, 11
Sec. 7(c), 7 U.S.C. 2016(c) 3
26 U.S.C, 152(a) 2
Fed. R. Civ. P., Rule 23(a) 5
Miscellaneous:
116 Cong. Rec. 41979 8
116 Cong. Rec. 42021 9
Note, *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065 ..... 8, 10
Rev. Rul. 71–468, 1971–2 Cum. Bull. 115 .. 3

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE ET AL., APPELLANTS

v.

LULA MAE MURRY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE APPELLANTS

1. As appellees recognize (Br. 22–28), this case presents a threshold question whether adjudication of their constitutional claims is appropriate at this time. We suggested in our brief (at notes 3 and 6) and further show below that each named appellee arguably was denied food stamps solely due to errors in the administrative interpretation of the "tax dependent" amendment to 7 U.S.C. 2014(b). Thus there are issues of statutory interpretation which should be resolved before this Court reaches the constitutional questions raised here.

a. Much of appellees' attack on the constitutionality of the "tax dependent" amendment is based upon the

allegation that the statute operates to deny food stamps on the basis of invalid dependency claims (Br. 35–39). But the statute has not been authoritatively construed as having that effect. As we indicated in our brief (at p. 12), we believe that the statute would be constitutional as so construed. However, such a construction might raise constitutional uncertainties which would not otherwise be present, and "'[w]hen the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'" *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 348 (concurring opinion of Mr. Justice Brandeis). See, also, *Cohens* v. *Virginia*, 6 Wheat. 264, 441.

In this case, it is "fairly possible" to construe the tax dependent amendment as applying only with respect to valid claims of tax dependency. Such a construction, appellees apparently concede, would result in the certification of appellees Lee, Beavert and Nevarez as eligible to receive food stamps. Furthermore, appellees' own factual allegations indicate that appellees Murry and Alderete were also denied food stamps on the basis of invalid dependency claims.[1]

[1] In order to claim a dependent, a taxpayer must provide over one-half the dependent's total "support." 26 U.S.C. 152(a). Appellee Murry's household received monthly support of $57.50 from the taxpayer claiming the dependency exemption and $117 per month in public assistance (Br. 10). Similarly, appellee Alderete's household received $105 per month from the taxpayer making

Thus they too would be entitled to food stamps if the statute were construed as denying eligibility only where the claim of dependency is itself valid.

b. In our brief, we stated (at note 3) that we read the statute as being "concerned only with dependency claims made with respect to a taxable year during which the dependent in fact resided in the household seeking food stamp assistance." Appellees contest this interpretation and argue that a dependency claim for the year prior to which the dependent became a member of the applicant-household also results in denial of food stamps, even though they concede that our reading, but not theirs, would result in certification of appellee Broderson as eligible for food stamps (Br. 27). We believe our interpretation to be correct as a matter of both statutory language and legislative intent.[2]

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the dependency claim, but Mrs. Alderete received an additional $198 per month in public assistance (Br. 12–13). Amounts received in the form of public welfare are included in determining whether a taxpayer has furnished the necessary minimum support. See, *e.g.*, Rev. Rul. 71–468, 1971–2 Cum. Bull. 115. (This result is not affected by 7 U.S.C. 2016(c), which provides that food stamp assistance shall neither be taxable as "income" nor constitute "resources" for purposes of determining the recipients' entitlement to other public assistance.) Thus it would appear that, contrary to appellees' claims (Br. 25–26), the taxpayer dependency claims with respect to these households were invalid.

[2] As appellees point out (Br. 27), prior to the issuance of an injunction in this case the Department of Agriculture had not spoken on this particular question of statutory interpretation. But we are now informed by the Department that if it prevails in this case, it will interpret and apply the tax dependent amendment in accordance with our reading of the statute, *i.e.*, as denying eligibility only when the claim of tax dependency is made with respect to a year during which the dependent lives in the applicant-household.

The statute, speaking in the present tense, provides: "[a]ny household which *includes a member* who has reached his eighteenth birthday and who *is claimed* as a dependent child * * * shall be ineligible * * * during the tax period such dependency is claimed and for a period of one year [thereafter] * * *" (emphasis supplied).[3] Thus the statute operates only with respect to an applicant-household of which the dependent was a member at the time he was claimed as a dependent. Furthermore, this reading accords with the general congressional interest in the sources of support which may reasonably be deemed available to the applicant-household (see our brief at pp. 9–11).

Under this reading of the tax dependent amendment, the denial of food stamps to appellee Schultz was erroneous;[4] the record with respect to appellee Valdez is insufficient to permit a determination whether the denial of food stamps to him was based

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[3] The statutory language "is claimed" does pose certain interpretative difficulties. The dependency claim normally is made by filing a withholding tax statement or may be made by answering a Department of Agriculture questionnaire prepared for purposes of the food stamp program. Thus, notwithstanding appellees' assertion to the contrary (Br. 5, 42), the tax dependent amendment does operate during the year for which the dependency claim is made. Appellees' argument apparently is based on the fact that the dependency claim may also be made in a tax return filed during the following year.

[4] Contrary to appellees' contention (Br. 26), appellee Schultz did not live in her present household while claimed as a tax dependent; she and her husband were denied food stamps after their marriage in 1972, but she was claimed as a tax dependent by her parents only for 1971 (App. 58).

on an incorrect interpretation of the Act.[8] At a minimum, therefore, it is arguable that each appellee here was denied food stamps solely on account of errors made in administering the Act.

c. For the foregoing reasons, it appears that the appellees, in addition to their constitutional claims, implicitly present non-constitutional statutory claims as well. As a matter of orderly constitutional adjudication, the questions of statutory interpretation should be resolved prior to consideration of appellees' constitutional claims. See, *eg., Light* v. *United States,* 220 U.S. 523, 538; *Siler* v. *Louisville & Nashville R. Co.,* 213 U.S. 175, 191. Moreover, if the statutory issues here are determined in appellees' favor, there will be no occasion to reach the constitutional question.[9]

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[8] Appellees now contend (Br. 26) that appellee Valdez was living in his present household during the year for which his parents claimed him as a tax dependent. But his affidavit, which is silent on the question of when he moved out of his parents' household (App. 50–52), does not support that contention.

[9] On the basis of the representations made in appellees' affidavits (App. 29–36, 48–62), with the exception of appellee Valdez each appellee would be entitled to food stamps if the statutory issues are decided in their favor. Further factual findings would be necessary before Valdez' eligibility could be determined. If Valdez is also determined to be eligible to receive food stamps, the alleged class on whose behalf this action was instituted would be deprived of any "representative parties" (Rule 23(a)(3), Fed. R. Civ. P.) and the action therefore should be dismissed.

Although the statutory questions involved here did not receive full consideration in the district court, this Court may of course determine them in the first instance. Cf. *Kent* v. *Dulles,* 357 U.S. 116. However, it may be more appropriate for this Court, in the exercise of its discretion, to vacate the judgment below and remand to the district court for initial consideration of the statutory issues.[7] That court would then have the advantage of briefing and argument on these issues, and its decision with respect to them might dispose of any need for further review. See note 6, *supra.* Moreover, if after resolving the statutory issues the district court determined that a constitutional question still remained, it might reconsider and reverse its prior holding of unconstitutionality.[8] If review were again sought, this Court would then have before it—as it now does not—the district court's reasoned elaboration of all the issues, statutory as well as constitutional, presented by this case.

2. In any event, the tax dependent amendment satisfies the applicable requirements of equal protection. Appellees apparently now acknowledge that this case is appropriate for the application of traditional equal protection analysis. See, also, *Ortwein* v. *Schwab,* No. 72–5431, decided March 5, 1973 (slip op., p. 5). However, they fundamentally misstate the statutory classi-

[7] The district court granted appellees' motion for summary judgment on constitutional grounds notwithstanding the government's representation (App. 77) that it had not had sufficient time to determine whether appellees had been properly denied food stamps under the statute and regulations.

[8] The decision below rested heavily on the assumption that the statute denied eligibility on the basis of invalid dependency claims. See J. S. App. A, 10.

fication which must be subjected to that analysis. Appellees contend (Br. 29) that the tax dependent amendment creates two classes of persons: needy persons eligible for food stamps because their households contain no disqualifying dependents, and needy persons ineligible for food stamps because their households do contain such tax dependents. This simple dichotomy conveniently but misleadingly assumes a general set of facts which appellees have been unable to prove.

The constitutional problem this case actually poses is whether the statutory classification is rationally related to either an assessment of actual need or the elimination of program abuse. We believe that there is such a rational relationship. The statute operates to deny food stamps to households in two sets of circumstances: first, when it is shown that a parent in a presumptively more affluent household is supplying substantial financial assistance to one or more members of the applicant household; and second, when it is known that such a parent provided one or more members of the applicant household with substantial financial assistance in the preceding year. In the first instance, there is a direct and obvious relationship between the statutory classification and the assessment of need: the household has a proven source of outside support which may well be subject to augmentation if the household in fact experiences some need.* In the

*Appellees complain (Br. 39–42) that in some cases the level of outside support may be inadequate. But they rely solely on examples involving invalid dependency claims. Hypothetical cases may be envisioned in which parents validly claiming dependency exemptions in fact supply inadequate support to raise their chil-

second instance the statutory classification is related both to the assessment of need and to the reasonable protection of the fisc against abuse of the program. Congress both reasonably presumed the continuation of parental support in the normal course of events and acted to discourage relatively affluent parents from shifting the burden of supporting their children onto the federal government.[10]

In enacting the tax dependent amendment, Congress was attempting to eliminate a major loophole in the food stamp program which had been exploited by "college students, children of wealthy parents" (116 Cong. Rec. 41979). This was done in the face of expressions of concern that if such abuses of the pro-

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dren out of poverty, but appellees in this litigation have failed to establish the existence of such a case. Even assuming such cases exist, however, the statute would not for that reason be unconstitutional. In applying the Equal Protection Clause, "a permissive approach which does not require every classification to be drawn with mathematical nicety seems a practical necessity if the process of legislation is not to be hopelessly stymied. Few statutes could be drawn with the abstract precision that untempered logic might demand." Note, *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1083.

[10] Appellees assert (Br. 42–46) that parents may discontinue their financial support of their children. That parents have in fact discontinued support is virtually impossible to establish during the course of the year, however, since tax dependency is based on a determination of annual support, much of which could be, and in many cases is, provided toward the close of the year. Furthermore, by denying food stamps in the "carry-over" year Congress has attempted to prevent parents, and children, from shifting the burden of support onto the federal government; in cases where the statute fails of this purpose, the deprivation of food stamps is only temporary and not absolute.

gram were not eliminated, political opposition to the program in its entirety could become overwhelming. See 116 Cong. Rec. 42021. Appellees here have not demonstrated that the statute has failed to achieve its major purpose, which they concede to be "praiseworthy" (Br. 31); nor have they established that the tax dependent amendment deprives substantial numbers of actually poor persons of needed food stamps. In fact, such deprivation would seem to be comparatively rare: Congress could reasonably assume that few truly impoverished households will contain a young adult who receives more than half his support from a relatively affluent parent.[11]

As Mr. Justice Stewart recently noted, "it has long been settled that the Equal Protection Clause is offended only by * * * classifications that are wholly arbitrary or capricious." *San Antonio Independent*

[11] Appellees complain (Br. 47–48) that the tax dependent amendment deprives all members of the household, and not merely the dependent, of food stamps. However, as we pointed out in our brief (at pp. 8–9), this argument is in fact directed against not the tax dependent amendment but rather the determination of eligibility on a household basis; and the determination of eligibility on a household basis is related to the statutory purpose of raising "levels of nutrition among low-income households." 7 U.S.C. 2011. (On the issue of what constitutes a "household", see *Knowles* v. *Butz*, No. C–72–1578 AJZ (N.D. Calif.), decided February 23, 1973. The government has determined that it will not appeal this decision, which holds that a "household" is an economic unit which may consist of fewer than all of the persons living together in a single dwelling unit. See 7 U.S.C. 2012(e). Thus whether persons living with the tax dependent will also be denied food stamp eligibility will depend upon a factual determination of whether they are part of the same "economic unit.")

School District v. *Rodriguez*, No. 71-1332, decided March 21, 1973 (concurring opinion, slip op., p. 2). Appellees here have not shown that Congress was acting arbitrarily or capriciously in concluding that the effect of the amendment would be to eliminate a significant program abuse without adversely affecting many persons in truly necessitous circumstances.[12]

3. Appellees contend (Br. 57–71) that the tax dependent amendment denies them procedural due process on the ground that they are prevented from establishing need despite the claims of tax dependency.[13] As we have pointed out in our brief (at p. 7, n. 4), this contention is nothing more than a restated equal protection argument in disguise.[14] Moreover, it is an argu-

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[12] At most, appellees arguably have shown that some actually needy persons have been denied food stamps by virtue of the tax dependent amendment. But the Equal Protection Clause permits "some sacrifice of equality and fairness * * * in order that the legal system [may] preserve flexibility to evolve new solutions to social problems." Note, *supra*, 82 Harv. L. Rev. at 1086.

[13] Appellees primarily rely on *Heiner* v. *Donnan*, 285 U.S. 312, *Hoeper* v. *Tax Commission*, 284 U.S. 206, and *Schlesinger* v. *Wisconsin*, 270 U.S. 230. In those cases the Court, following "[t]he *Allgeyer-Lochner-Adair-Coppage* constitutional doctrine" (*Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U.S. 525, 535), struck down various taxing statutes on due process grounds over the dissents of Justices Holmes, Brandeis, and Stone. Any continuing validity which those decisions may still retain presumably inheres only in the elements of rudimentary equal protection analysis implicit in the majority opinions.

[14] Appellees apparently recognize this fact by relying on *Dunn* v. *Blumstein*, 405 U.S. 330, *Reed* v. *Reed*, 404 U.S. 71, and *Carrington* v. *Rash*, 380 U.S. 89, in which this Court expressly applied an

ment which would in effect require Congress to match need and eligibility with mathematical nicety. Equal protection does not demand such precision. See *Dandridge* v. *Williams*, 397 U.S. 471, 485.

We further add that appellees' argument with respect to procedural due process is based on the erroneous premises that the basic eligibility criterion is "need" and that applicants should be entitled to demonstrate need notwithstanding their failure to satisfy other statutory requirements. But since "need" is not a concept which either by its nature or as a result of a long history of judicial consideration has a clearly ascertainable content, Congress wisely chose not to make "need" the statutory standard for food stamp eligibility. This decision reflected in part an awareness that the determination of "need" on a case-by-case basis would be administratively unworkable. Moreover, Congress was concerned not only with "need" but also with attempts by relatively affluent parents to shift the burden of supporting their young adult children onto the federal government. Consequently, Congress established, as the basic eligibility criteria, "household income and other financial resources, including both liquid and nonliquid assets," and the absence of any disqualifying tax depend-

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equal protection analysis. Appellees also cite *Stanley* v. *Illinois*, 405 U.S. 645, which seems ultimately to turn on considerations of equal protection; moreover, in holding that a father cannot be separated from his children without a hearing, the Court in *Stanley* gave great weight to the fact that "[t]he rights to conceive and to raise one's children * * * [are] '* * * far more precious * * * than property rights' " (405 U.S. at 651).

ent. 7 U.S.C. 2014(b).[15] A hearing is furnished with respect to an applicant-household's satisfaction of these requirements. Cf. *Goldberg* v. *Kelly*, 397 U.S. 254.

Congress and the states have properly imposed income and asset limitations on food stamp eligibility; as a consequence some genuinely needy households with, for example, extraordinary necessary expenditures are thereby excluded from eligibility, without an opportunity to establish at a hearing that they are in need. Administrative necessity requires the employment of such broad presumptions as are implicit in the income and asset limitations.

The tax dependent amendment simply provides an additional limitation on eligibility which can be seen to be closely analogous in part to an asset limitation: the possession of relatively affluent parents who provide substantial financial support is treated as an asset which is sufficiently important to render the recipient household ineligible for food stamp assistance. At the same time, the amendment purposely acts to deny food stamps in some cases regardless of need, in order to discourage prosperous parents from transferring the responsibility for their support onto the taxpayers generally. As we have shown here and in our brief, that statutory classification has a rational basis.

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[15] In short, Congress determined to provide food stamps not for the "needy" but rather for those who satisfy specific eligibility requirements. Appellees' due process argument is simply that they should be provided a hearing to determine "need" even though they have not met the eligibility conditions. But since Congress was not concerned with "need" to the exclusion of all other considerations, such a hearing would not further the legislative purpose. Thus *Bell* v. *Burson*, 402 U.S. 535, is inapposite here.

CONCLUSION

For the reasons stated above and our main brief, the judgment of the district court should be reversed.

Respectfully submitted.

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